IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

REVIEW PETITON ST.NO.27373 OF 2004
IN
SECOND APPEAL NO. 433 OF 2003

Office notes, office memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.

Court's or Judge's orders.

Shri P.R.Arjunwadkar for the Petitioners.

Shri S.S.Shah for the Respondents 1(f) to 1(l).

CORAM : ABHAY S.OKA, J.

DATED : 4th November,2004.

P.C.:

1. Heard Shri Ajunwadkar for the Petitioners and

Shri Shah for Respondents Nos.1(f) to 1(l).

2. Shri Arjunwadkar placed reliance on the judgments viz.(i)AIR 1976 Madras 84 (Mohammed Ibrahim v/s. Sayed Muhammad Abbubakker & ors.), (ii) AIR 1932 Calcutta 538 (Aminaddin Munshi v/s.Tajaddin & ors.), and (iii)AIR 1963 Patna 128 (Mst.Bibi Bintul Fatma & anr. v/s. S.M.Aftab Ahmad), and submitted that since both the parties were in possession of the property subject matter of the Second Appeal, the burden was on the original Plaintiff in suit for possession to prove that the property was his self acquired property.

He submitted that this aspect has not been considered while deciding the Second Appeal. He also submitted that there are admissions in the document of mortgage which are also not considered while deciding the Second Appeal.

3. Shri Shah, the learned Counsel appearing for the contesting Respondents submitted that all the parties who were the Respondents in the Second Appeal have not been impleaded in the Review Petition. He also pointed out that while deciding the Civil Application filed in the Second Appeal, cost was ordered to be paid by the Petitioners in the Review Petition and the same has not been paid. He submitted that there is no error on the face of the record.

4. I have carefully considered the submissions. The Judgments relied upon by Shri Arjunwadkar are not applicable to the facts of the present case. The said Judgments may have applicability in a different fact situation. In the first two cases of Madras High Court and Calcutta High Court, the High Courts were dealing with the family properties. So far as the Judgment of the Patna High Court is concerned, the High Court was dealing with the case under Order XXXIX Rule 1 of the Code of Civil Procedure, 1908, Therefore, there is no merit in the first submission.

5. So far as the second submission is concerned, it cannot be said that there is error apparent on the face of the record warranting exercise of jurisdiction under Order XLVII of the Code. There is merit in the Review Petition. The same is dismissed with no order as to costs.

6. Parties to act on authenticated copy of the order.

Judge.